

Remarks/Arguments

A. Status of the Claims

Claims 1-28 were pending when the Restriction Requirement was issued on February 23, 2007. Claims 10-13 have been amended. Support for the amendments can be found throughout the specification and claims as originally filed. No new matter is added.

Claims 1-28 are pending.

B. The Restriction Requirement

1. Summary of Requirement and Applicant's Election

The Examiner requests restriction to one of the following two groups:

- I. Claims 1-16 and 17-28, drawn to a composition comprising at least two of ximenynic acid, and niacin, alpha-lipoic acid, or mushroom extract; and
- II. Claims 17-26, drawn to a method of treating damaged skin comprising topical application of a composition comprising at least two of ximenynic acid, and niacin, alpha-lipoic acid, or mushroom extract.

Restriction Requirement at page 2.

A restriction between Groups I and II is improper for at least the reasons discussed in the following section. In the event the Restriction Requirement is maintained between these Groups, Applicant elects the claims associated with Group I for further prosecution in this case. Applicant's argument against the Restriction Requirement is based solely on the lack of an additional burden to search Groups I and II together. The argument do not create an estoppel against Applicant and is not an admission that the restricted Groups are either patentably distinct or patentably indistinct from one another.

2. Restriction Between Groups I and II Is Improper

Restriction between Groups I and II is improper, as there is no “serious burden” to search Groups I and II together. The *Manual of Patent Examining Procedure* (MPEP) explains that “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” MPEP § 803. A “serious burden” exists in situations where a different or separate field of search is required to search Groups I and II together. *Id.* at § 808.02. A different field of search is shown “[w]here it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other invention(s).” *Id.*

Searching Groups I and II together does not require a different or separate field of search. All of the ingredients in the Group I composition claims are present in at least the Group II, claim 17, method claim. This overlap reduces the searching burden on the Examiner, as a search of the Group I claims would encompass aspects for a search of the Group II method claims, and *vice versa*. Stated another way, any search dedicated to the Group I composition claims would necessarily result in identifying documents that are pertinent to the Group II method claims. The opposite is also true. Any search dedicated to the Group II method claims would identify documents pertinent to the Group I composition claims.

For at least these reasons, a “serious [searching] burden” does not exist between Groups I and II and restriction is improper.

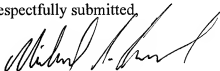
C. Rejoinder

Applicant reserves the right to rejoin the non-elected method claims in the event that the restriction between Groups I and II is maintained. *See* MPEP § 821.04; *see also* Restriction Requirement at page 4.

D. Conclusion

Applicant requests that the restriction between Groups I and II be withdrawn and that both of these Groups be searched and considered for patentability in this application. Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicants' representative at (512) 536-3020.

Respectfully submitted,



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